

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

NETLIST, INC.,

Plaintiff,

VS.

MICRON TECHNOLOGY, INC.,
MICRON SEMICONDUCTOR
PRODUCTS INC., MICRON
TECHNOLOGY TEXAS LLC,

Defendants.

Case No. 2:22-CV-203-JRG

JURY TRIAL DEMANDED

**NETLIST INC.'S REPLY IN SUPPORT OF ITS MOTION FOR
SUMMARY JUDGMENT DISMISSING MICRON'S AFFIRMATIVE
DEFENSE OF BREACH OF RAND OBLIGATION OR IN THE
ALTERNATIVE FOR SEVERANCE (DKT. 280)**

Micron does not dispute that, at minimum, its RAND defense is an equitable issue that should be severed from the jury trial. Dkt. 295 at 1 (“nor has Micron claimed this equitable defense should be tried by the jury”). Micron likewise does not dispute that, if the Court grants summary judgment the patents are not standard essential, its RAND defense fails as well. *Id.*

Micron disputes, however, whether summary judgment is appropriate for the additional reason that Netlist’s RAND proposals to Micron included foreign patents, and therefore this Court lacks jurisdiction to address them. *See Optis Wireless Tech., LLC v. Apple Inc.*, 2020 WL 999463, at *3 (E.D. Tex. Mar. 2, 2020) (court lacks jurisdiction to address whether SEP holder has “complied with their obligations under foreign laws or as they relate to foreign patents”).

First, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Dkt. 295-2 at 2, Dkt. 295-3. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *See Tremont LLC*

v. Halliburton Energy Servs., Inc., 696 F. Supp. 2d 741, 782 fn. 42 (S.D. Tex. 2010) (“The document is not inadmissible under Evidence Rule 408 because it is a letter from the EPA that is not being offered against the EPA”). It does not control [REDACTED]

[REDACTED]

[REDACTED] *See Nat’l Presort, Inc. v. Bowe Bell + Howell Co.*, 663 F. Supp. 2d 505, 508 (N.D. Tex. 2009) (“the statements contained in the letter are not being used to prove ‘liability for, invalidity of, or amount of’

any claim. Rather, they are being offered to establish jurisdiction.”) (internal citations omitted).

Second, Micron concedes that the test for jurisdiction is whether “the U.S. components of the license offers could [] be extricated from the foreign components in any meaningful way,” *Optis*, 2020 WL 999463, at *4, but argues that there is evidence that would allow the Court to determine this. This argument fails. As to [REDACTED]

[REDACTED] But as discussed above, that is wrong, and Micron does not engage with the fact [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Opp. at 6-7. Micron

[REDACTED]
[REDACTED]
[REDACTED]
Dkt. 280-7 at 3. Further, the “calculations” Micron refers to [REDACTED]

[REDACTED] *Id.* at 1-2. Netlist’s actual
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Ex. 10

(Westergard) at 79:15-23 [REDACTED]
[REDACTED]
[REDACTED].

Third, Micron attempts to distinguish this Court’s decision in *Optis*. But just as in that case, Micron, as the party asserting an affirmative defense and bearing the burden of proof, has produced

[REDACTED]

Dated: December 6, 2023

Respectfully submitted,

/s/ Jason G. Sheasby

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CERTIFICATE OF SERVICE

I hereby certify that, on December 6, 2023, a copy of the foregoing was served to all counsel of record.

/s/ Yanan Zhao
Yanan Zhao

CERTIFICATE OF AUTHORIZATION TO FILE UNDER SEAL

I hereby certify that the foregoing document and exhibits attached hereto are authorized to be filed under seal pursuant to the Protective Order entered in this Case.

/s/ Yanan Zhao
Yanan Zhao